

Information sheet for expat clients



Can I Divorce in the UK?

In the question of where and how you can obtain a divorce there are some technical factors which need to be considered.

Firstly, the law in England and Wales is different to the law in Scotland. So if you were married under Scottish law or consider yourself a Scottish citizen you should take advice from a solicitor qualified in that jurisdiction.

The main question to consider however is where you are 'domiciled.' This will determine which legal system has jurisdiction should you wish to obtain a divorce.

The first thing to note is that 'residence' and 'domicile' is not the same thing. You may have been a resident of Spain, for instance, for many years and still be domiciled in the UK for legal purposes. Domicile is a somewhat obscure legal concept but means, basically, that you have a 'legal connection' with England and that the English courts therefore have jurisdiction to grant you a divorce.

Unless you have relinquished your domicile by:-

- taking out foreign citizenship or naturalization or
- cutting all ties with England and having the intention to remain in your chosen country for the rest of your days

then in most circumstances anyone originally from England or Wales can use the English Courts, on the basis that they are 'domiciled' in the UK.

The House of Lords said that the test to be applied by divorce judges is, "was the connection with England of the petitioner sufficiently close to make it desirable that our courts should have jurisdiction to dissolve the marriage." As long as an English court is satisfied that England is the Petitioner's 'home country' and he has not 'abandoned' his home country then the court can deal with a divorce, even in cases where someone has lived abroad for many years.

Sometimes, however, there are problems and some judges will occasionally query a divorce, at the Decree Nisi stage, on the grounds of domicile.

When this happens it is almost always because the judge will suspect that the party has 'relinquished their domicile', usually because the judge thinks they have formed an intention to spend the rest of their days in their adopted country i.e. that the party has relinquished their 'domicile of origin', and adopted a 'domicile of choice'.

Occasionally a Judge will ask a Petitioner to 'file further evidence of domicile' before granting a Decree Nisi. In this case you will be required to send to the Court a sworn statement (affidavit), setting out details such as:-

- the fact that they were born in England
- that they hold a British passport
- that they have relatives (e.g. parents or brothers and sisters in England
- that they have assets in the UK, such a house property, a pension fund or any other sort of valuable asset
- that they regard England as their 'home country' and do not intend to live abroad forever

This statement can be prepared for you by your lawyer.

Once The District Judge has such an affidavit, he normally grants the divorce without any further ado.

So, just in case the District Judge does raise this type of query in your case, please let us have a note of any of the above facts that apply to you, and we will do the rest.

This fact sheet does not provide advice. Please do not take any action based on the information here without taking legal advice from a specialist family lawyer.

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